

STATE OF MICHIGAN  
COURT OF APPEALS

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PATRICIA THOMAS and ERNEST THOMAS,

Plaintiffs-Appellants,

v

NEW MONROE BIG BOY, INC.,

Defendant-Appellee.

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UNPUBLISHED

May 19, 2005

No. 252444

Monroe Circuit Court

LC No. 02-015605-NO

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition in favor of defendant in this premises liability action. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Patricia Thomas tripped on a depression in the cement outside defendant's restaurant. The rectangular depression is uneven with the walkway, slopes downward toward a support column, and contains a cylinder-shaped light fixture that protrudes above the surrounding cement.

On appeal, plaintiffs assert that the trial court erred in granting defendant's motion for summary disposition based on the open and obvious danger doctrine. We agree. In general, an invitor owes a duty to his invitees to exercise reasonable care to protect them from an unreasonable risk of harm caused by a dangerous condition on the land, but this duty does not extend to requiring a warning or protecting invitees from hazards that are open and obvious. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). "[W]here the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee." *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). In determining whether a condition is "open and obvious," an objective standard, i.e., a reasonably prudent person standard, is utilized. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 330; 683 NW2d 573 (2004). A danger is open and obvious if an average user with ordinary intelligence would have been able to discover the danger and the risk presented upon casual inspection. *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002).

After review of the evidence presented to the court on the motion for summary disposition, including the photographs, and consideration of the shading effect on the area, we conclude that reasonable minds could differ with respect to whether the sidewalk depression was open and obvious. A reasonably prudent person may not have observed and avoided the hazard on casual inspection.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Michael R. Smolenski